



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 30, 2001

MEMORANDUM TO:

Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM:

Dennis K. Rathbun, Director
Office of Congressional Affairs

SUBJECT:

HOUSE ENERGY HEARING, "NATIONAL ENERGY
POLICY: NUCLEAR ENERGY," 3/28/01

The House Energy and Commerce Committee's Subcommittee on Energy and Air Quality held its seventh in a series of hearings exploring various facets of a comprehensive national energy policy. Previous hearings have examined natural gas, coal, and the California energy crisis; a future hearing will examine the oil industry. The hearing demonstrated Members' strong interest in nuclear power, ongoing concerns by Rep. Strickland (D-OH) regarding the Portsmouth Gaseous Diffusion Plant, (GDP) and generally complimentary statements regarding the NRC's actions to streamline the regulatory process. Dr. Travers testified for the NRC. A witness list is attached, and testimony is available in OCA.

Chairman Barton, saying that he had heard "good things" about the Agency, commended Chairman Meserve for his leadership efforts, noting that his interactions with the Subcommittee have been very cooperative. With demands for a domestic fuel source, safety and aesthetic questions regarding natural gas and oil pipelines, and pollution concerns about coal plant emissions, he contended that a balanced energy policy needs nuclear. Ranking Minority Boucher (D-VA) also said that nuclear has a place in the nation's energy portfolio, although he noted uncertainty about what role it will play due to the lack of new orders, the number of canceled plants, questions about the domestic nuclear fuel supply, high capital costs for construction, and public perception, despite a "commendable" safety record over the last decade. He urged that the nuclear waste fund be restored to off-budget status and that the Price-Anderson Act be reauthorized.

Rep. Whitfield (R-KY), who has the Paducah GDP in his district, urged protection of the domestic capability for uranium enrichment in the face of a less reliable but cheaper supply from Russia. Both Reps. Norwood (R-GA) and Wilson (R-NM) spoke to the need for nuclear in a comprehensive energy policy. Rep. Markey (D-MA) commented that the anniversaries of Three Mile Island and Chernobyl are reminders of the risks inherent with nuclear energy. He referenced others' comments that more people have died from non-nuclear energy sources, but he added that in an accident or explosion with those sources, people do not have to be widely

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evacuated nor do livestock and agricultural products have to be discarded. He questioned whether the nuclear industry is really clean, safe, and economically viable when it is trying to weaken groundwater protection standards, seeking Price-Anderson indemnification and arguing both for tax subsidies for research and development and for a bailout of stranded costs.

Rep. Tauzin (R-LA), Chair of the full Committee, called the industry's increase in output and efficiency "remarkable." Although he said that nuclear power's fate would be determined by the private sector, actions in Congress could affect the outlook. He listed issues facing the industry: 1) Price-Anderson reauthorization; 2) the NRC's administration of its authority in a consistent and even-handed manner; 3) the NRC's preparation for license renewals; 4) the NRC's ability to consider CP/OL license applications (its skills might be "rusty"); 5) resolution of spent nuclear fuel disposal issues; and 6) viability of the domestic fuel supply.

Dr. Travers testified regarding the NRC's safety mission and its various initiatives to streamline the regulatory process. Mr. Magwood from DOE commented that NRC had been a "reliable and consistent regulator and has done a great job." He added that NRC's commendable performance with license renewals and efficiencies resulting from industry consolidation among utilities who have a long-term interest in nuclear power promote confidence in nuclear power's future. The EIA witness painted a less encouraging picture, pointing to high construction costs and uncertainties with safety and waste.

Reps. Barton and Shimkus (R-IL) inquired about the status of the nuclear waste fund and whether funds had been diverted. These questions were tied to how to pay for construction of a repository when a nuclear waste bill is considered; the Subcommittee will hold a hearing on Yucca Mountain in the first half of this year. Rep. Barton asked what steps the NRC was taking to prepare for new applications such as the Pebble Bed Modular Reactor (PBMR). Dr. Travers described the pre-application review, the planning wedge in future budgets, and the internal review -- at the Commission's direction -- to determine readiness for a construction inspection program.

Rep. Boucher asked if NRC's legislative proposal to eliminate dual EPA-NRC regulation in setting radiation protection standards for the high-level waste repository was adopted, what would happen to the liability under Superfund for nuclear power plants versus utilizing EPA's CERCLA expertise to set such standards? He also asked whether NRC's proposal to lift the ban on foreign ownership includes a requirement to consult with other agencies on countries which might have contrary interests. NRC will supply the answers for the record. He then asked whether the NRC had adequate revenues in the face of the change in the user fee structure which eliminated fees for certain activities. Dr. Travers responded that the Agency has sufficient resources, but if many projects come before the Commission, additional resources may need to be sought.

Rep. Largent (R-OK) asked why the U.S. was not reprocessing spent nuclear fuel; DOE replied that it was not economic to do so. He then asked Dr. Travers to explain the discrepancy between reports that the number of unplanned shutdowns has decreased, yet PIRG contends that there has been lax NRC enforcement and oversight, pointing to worker fatigue and fire protection issues. Dr. Travers replied that the NRC was a "regulator with a bent and passion for safety," and that policies were in place to ensure that the next generation of reactors would be even safer than the already-safe current ones.

Senator Domenici (R-NM) testified that a periodic crisis is "good" because it forces America to address its energy priorities. He commented that on average, nuclear power is safer than any other energy and addresses greenhouse effect concerns. He asked that the Subcommittee review his bill, S. 472, the Nuclear Energy Electricity Supply Assurance Act (see OGC memo of 3/21/01). He commented that NRC was doing better, adding that the Agency "now really was a regulator and not playing games that waste their (industry) time." Rep. Markey asked him about obstacles to construction of new plants in New Mexico. The Senator replied that five years ago, he would have said construction was impossible. Now, he expects a plant to be built, not in New Mexico, but near an existing plant, and such construction will be easier with a new way of licensing and the "modularness" of design, as well as improved financing. Rep. Markey then asked whether the industry had a misperception of the nuclear power outlook when it was seeking recovery of stranded investments for plants that are now desirable purchases. The Senator said there was no misperception, but with the energy crisis, there was a broader base of acceptance of nuclear power.

Rep. Shimkus asked Dr. Travers about potential retirements of nuclear power plants. Dr. Travers replied that about 40% of plants have formally indicated plans for license renewal, but that 80% or more are likely; the industry has indicated an even higher number is possible. Having toured Yucca Mountain last weekend, the Congressman asked Senator Domenici if he thought it was a safe option for disposal. The Senator replied that he didn't know, but he commended France for its approach of temporary disposal. He added that he didn't know if the differences between NRC and EPA could be resolved, but he doubted that the repository could be built under EPA's standards. Rep. Shadegg (R-AZ) also asked how to resolve EPA and NRC differences, and he raised California's statute which prohibits the new construction of nuclear plants until the waste issues are settled. The Senator replied that he had visited Palo Verde, and no one now questioned the need for that plant; he added that if California waits for the waste issue to be resolved, it may have to wait a long time. He advocated the construction of a temporary facility near a permanent facility. Rep. Shimkus said that Yucca Mountain should be considered a possible asset for the future if reprocessing were to occur, and he believes Yucca Mountain can meet EPA's standards.

Entergy (testifying on behalf of NEI) and INPO spoke to the improved performance of nuclear plants, industry consolidation, environmental benefits, competitiveness with natural gas, and the volatility of the oil and gas markets as harbingers for the renaissance of nuclear power. Entergy commended NRC for its license renewal process, saying that it has been functioning in a timely and effective manner. INPO added that, with the industry's commitment to safety and NRC's continued strong and fair regulation, nuclear energy had a bright future. Exelon described its partnership in the South African venture for the PBMR. The steep learning curve for Exelon and the NRC was referenced since the technology and licensing process had not been tested before. Mr. Longenecker, a consultant, spoke to the endangered domestic supply of nuclear fuel. PIRG's Ms. Aurilio advocated a shift from nuclear to renewable energy, such as wind turbines. She referenced health effects from uranium mining, groundwater contamination from in situ mining practices, complexity of operating nuclear plants, and the dangers of both nuclear fuel and nuclear waste. She also cited Indian Point 2 and the steam generator tube breakage, saying that NRC standards are too lax. She said that nuclear power is unreliable, pointing to the outage at San Onofre, and concluded that it was not economic, pointing to the EIA's cost analysis. Rep. Barton asked what PIRG's solution was to nuclear waste; she responded that generation should not have occurred without a solution in hand. She added that

there should be a fair and honest process which involved the public to reach a mutual decision, including possibly leaving the waste where it is to protect the public and the environment.

Rep. Norwood (R-GA) asked whether MOX should be utilized: Entergy replied that nothing should be foreclosed. Mr. Longenecker commented that MOX could build the nation's technical base and would address proliferation concerns. Rep. Barton inquired what Congress needs to do to make the nuclear option a real option. The witnesses suggested a high-level waste bill, repeal of PUHCA, renewal of Price-Anderson, review of the Russian-HEU Agreement which is due to expire on 12/31/01, and assistance to NRC and the national laboratories to avert the loss of technical expertise. Entergy said that NRC was doing an "admirable job at this point" with its regulatory processes. Rep. Barton then asked why the PBMR was progressing rather than NRC-certified designs and if there was a concern about fuel supply. Exelon replied that the PBMR's small size facilitated a shorter construction time (24 months versus 5-7 years) and smaller capital investment (\$120 million versus several billion). Entergy added that the other designs could go forward, as industry's comfort level increases with construction abroad. Mr. Longenecker cautioned that economies of scale could argue against the PBMR. Although there is not a domestic fuel supply, Exelon said it was technically feasible, perhaps by blending military fuel. PIRG expressed concerns that PBMR lacked a containment because the fuel was "safe," yet BNFL, which has a questionable record, would fabricate the fuel. She that Commissioner Merrifield had raised the same concern. Exelon replied that a containment would be provided.

Rep. Shimkus asked about the "brain drain" at the NRC. INPO replied that the demographics of the NRC were shared by the industry, which was examining strategies with universities to revitalize the pipeline. Having an independent third party, such as MIT, train federal employees to maintain skill levels was suggested.

Throughout the hearing, Rep. Strickland, who has Portsmouth GDP in his district, asked numerous questions about the NRC's legal analysis of an economic and reliable domestic source of uranium enrichment, the demise of a reliable domestic nuclear fuel supply, and why the NRC would allow Portsmouth to enter cold shutdown before the ability of Paducah to enrich uranium to a higher level had been proved. In recognition of his concern on this issue, Rep. Barton provided him with additional time to ask questions, and some individual members ceded their time to him as well.

Reps. Whitfield and Strickland inquired where higher enriched fuel would come for the PBMR, since Portsmouth was the only GDP authorized for enrichment up to 10%, and Paducah was currently only authorized up to 5.5%. DOE said it could not make economic decisions and cannot guarantee that Paducah will be capable of production at the needed levels; he stated that NRC approved the enrichment upgrade from a safety perspective. Rep. Strickland then asked about the timetable for closing Portsmouth. Dr. Travers described the process, stressing that Chairman Meserve had given serious consideration to stakeholders' views, but the NRC's role was in public health and safety to ensure that the plants were operated safely; a determination regarding a reliable and economic supply was under Congress' purview. DOE added that once Portsmouth was in cold standby, it would take one and a half years and millions to bring it back online; additionally, degradation would occur in cold standby after five years. Mr. Magwood stated that DOE had thought that the two GDP's would operate beyond 2003, and that the Government was unprepared for this shutdown decision due to the financial problems of USEC. Rep. Strickland replied that the Government was unprepared because it

did not listen to warnings. Exelon commented that it preferred a domestic, competitive feedstock so that it would not be held hostage to a single, uneconomic source, adding that a private sector solution might be necessary.

Rep. Strickland referenced 1997 and 2000 memos by the NRC where different conclusions were drawn about the Agency's statutory responsibility with "economic and reliable." He added that the NRC's change of position appeared to be an attempt to "cut off our questions," which was "very troubling." He questioned whether public notice had been given on this legal analysis, which he understood could lead to litigation. He concluded by saying that this "federal Agency had been negligent, and willfully so, and I believe the Subcommittee should look at that."

Chairman Barton (R-TX) expects that the Subcommittee will move bipartisan comprehensive energy legislation, including a "nuclear option," this Congress. The Senate Energy and Natural Resources Committee has also held hearings on national energy policy, but that Committee currently appears to be taking a more partisan approach, with dueling energy bills introduced by Chairman Murkowski (R-AK), S. 388, the National Energy Security Act, and by Ranking Minority Bingaman (D-NM), S. 597, the Comprehensive and Balanced Energy Policy Act. OGC is preparing analyses of those two bills.

Attachment: As stated

cc: SECY
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OPA
CFO
OIG
OCAA

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SUBCOMMITTEE ON ENERGY AND AIR QUALITY

DATE: Tuesday, March 27, 2001
TIME AND PLACE: 1:00 p.m. in Room 2123 Rayburn House Office Building
SUBJECT: National Energy Policy: Nuclear Energy

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